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Millen White Zelano & Branigan
Arlington Courthouse Plaza 1
2200 Clarendon Boulevard, Suite 1400
Arlington VA 22201

In re Application of :
FUJISATO et al. :
Serial No.: 10/562,833 :
PCT No.: PCT/JP04/09436 :
Int. Filing Date: 02 July 2004 : DECISION ON PETITION
Priority Date: 04 July 2003 :
Attorney's Docket No.: AKA-0292 : UNDER 37 CFR 1.181
For: METHOD AND SYSTEM FOR INJECTING CELLS :
INTO BIOLOGICAL TISSUE :

This decision is in response to applicant's "Request for Withdrawal of Improper Notice of Abandonment", treated as a petition under 37 CFR 1.181, filed 21 January 2009 in the United States Patent and Trademark Office (USPTO) in the above-captioned application.

BACKGROUND

On 30 December 2005, applicant filed the U.S. national stage application for international application PCT/JP04/09436, under 35 U.S.C. 371. These papers were assigned U.S. serial number 10/562,833.

On 10 July 2006, a Notification of Missing Requirements, was mailed to applicant indicating, *inter alia*, that an oath or declaration, in compliance with 37 CFR 1.497(a) and (b), was required.

On 06 September 2006, applicant filed a response. A two page Response and a copy of the Notification of Missing Requirements is found in the application file. However, a copy of the declaration allegedly filed as part of the response is not found in the application file.

On 02 April 2007, a Notification of Defective Response was mailed to applicant indicating that a declaration, in compliance with 37 CFR 1.497(a) and (b), was required.

On 02 May 2007, applicant filed a response to the Notification of Defective Response accompanied by only the first page of the declaration. The signature pages were not attached.

On 20 November 2008, a Notification of Abandonment was mailed to applicant indicating that applicant failed to respond to the Notification of Missing Requirements.

On 21 January 2009, applicant filed the instant petition, accompanied by a copy of the declaration and an itemized postcard receipt with USPTO date-stamp 06 September 2006, indicating receipt of the identified documents.

DISCUSSION

Applicant requests withdrawal of the holding of abandonment, indicating that a response to the Notification of Missing Requirements, was originally mailed on 06 September 2006.

As stated in section 503 of the Manual of Patent Examining Procedure (Rev. 7, July 2008)(MPEP):

A postcard receipt which itemizes and properly identifies the items which are being filed serves as *prima facie* evidence of receipt in the USPTO of all the items listed thereon on the date stamped thereon by the USPTO.

Applicant states that the executed declaration for the international application was originally filed on 06 September 2006 and provided a copy of the USPTO date-stamped postcard receipt. The postcard identifies the application number, applicant name and docket number. Among the items listed on the postcard receipt are "Missing Parts Response W/DECL.". Fees of \$130 were also noted. The postcard is date-stamped by the USPTO "OIKE SEP 06 2006."

A review of the USPTO date-stamped, itemized postcard receipt indicates that the declaration and \$130 fee were deposited with the USPTO on 06 September 2006. Applicant has now presented a copy of the papers originally filed on 06 September 2006 and provided a copy of the date-stamped postcard receipt. Thus, the evidence is sufficient to establish that the documents were received in the USPTO on 06 September 2006 and that the postcard receipt indicating a date of 06 September 2006 was mailed by the USPTO. Accordingly, the Office accepts the copy of the papers as a replacement for the missing original documents with a deposit date of 06 September 2006.

A review of the declaration reveals that the declaration identifies and is executed by each inventor, and states the residency, citizenship and mailing address of each inventor. Thus, the declaration is acceptable and the requirements of 37 CFR 1.497(a) and (b).

CONCLUSION

The petition under 37 CFR 1.181 is GRANTED.

The 20 November 2008 Notification of Abandonment is hereby VACATED.

The copy of the declaration originally submitted on 06 September 2006 and resubmitted on 21 January 2009 are acceptable. The declaration meets the requirements of 37 CFR 1.497(a) and (b). The surcharge of \$130 was paid on 06 September 2006.

The application will be forwarded to the United States Designated/Elected Office (DO/EO/US) for further processing. The 35 U.S.C. 371(c)(1), (c)(2) and (c)(4) date is **06 September 2006**.



Cynthia M. Kratz
Attorney Advisor
Office of PCT Legal Administration

Telephone: (571) 272-3286
Facsimile: (571) 273-0459